Supreme Court of Indiana.

WILSON *v.* JOSEPHS.

Decrees in equity operate only on the person; and suits will be entertained, although the subject of the suit is situated in another state.

Therefore, if a creditor send, or is threatening to send, his claim into a state in which the debtor does not reside, and there seek to reach his wages, and by reason of such proceedings the debtor will be deprived of his right of exemption, the courts of the state in which the debtor resides will restrain the creditor from proceeding in the foreign jurisdiction, if he be within the court's jurisdiction.

APPEAL from the Floyd Circuit Court.

B. F. Davis, for appellant.

J. K. Marsh, for appellee.

The opinion of the court was delivered by

ELLIOT, J.—It is alleged in the complaint that the appellant is a resident householder of this state, and an employee of a railroad company incorporated under the laws of the state; that the appellee is also a resident of Indiana; that the latter is about to institute proceedings in attachment in the state of Illinois, and will, unless restrained, garnish the wages due the former from his employer; and that the purpose of the appellee is to prevent the appellant from availing himself of the exemption laws of Indiana. Prayer for an injunction restraining the appellee from prosecuting his proceedings in attachment in the courts of Illinois.

It is a familiar principle of equity jurisprudence that decrees in equity operate only on the person, and that suits will be entertained, although the subject of the suit is situated in another state. Mr. Pomeroy thus states the general principle: "Where the subject-matter is situated within another state or country, but the parties are within the jurisdiction of the court, any suit may be maintained and remedy granted which directly affect and operate upon the person of the defendant, and not upon the subject-matter, although the subject-matter is referred to in the decree and the defendant is ordered to do or to refrain from certain acts towards it, and it is thus ultimately but indirectly affected by the relief granted. As examples of this rule, suits for specific performance of contracts, for the enforcement of express or implied trusts, for relief on the ground of fraud, actual or constructive, for the final accounting and settlement of a partnership, and the like, may be brought in any state where jurisdiction of defendant's person is obtained, although

the land or other subject-matter is situated in another state, or even in a foreign country:" 3 Pom. Eq. Jur., § 1318. Judge STORY lays down a like doctrine: Story Eq. Jur., § 899. Our own court has recognised and enforced this equitable principle, as, indeed, all the courts have done, without any material diversity of opinion: *Bethell* v. *Bethell*, 92 Ind. 318. The principle asserted by these authorities supplies the initial proposition for our decision, and the only possible doubt that can arise is whether it applies to such a case as the present.

The authorities do apply it to such cases, and, in our judgment, they proceed on sound and satisfactory reasoning. In *Snook* v. *Snetzer*, 25 Ohio St. 516, the question was presented as it is here, and it was held that an injunction would lie. The same view of the law was asserted in *Dehon* v. *Foster*, 4 Allen 545, where it was said: "An act which is unlawful and contrary to equity gains no sanction or validity by the mere manner or form in which it is done. It is none the less a violation of our laws because it is affected through the instrumentality of a process which is lawful in a foreign tribunal. By interposing to prevent it, we do not interfere with the jurisdiction of courts in other states, or control the operation of foreign laws. We only assert and enforce our own authority over persons within our jurisdiction, to prevent them from making use of means by which they seek to countervail and escape the operation of our laws, in derogation of the rights and to the wrong and injury of our own citizens." In the recent case of *Cunningham* v. *Butler*, 6 N. E. Rep. 782, the general principle which rules here is strongly asserted and rigidly enforced. The question came before the court in *Engel* v. *Scheuerman*, 40 Geo. 206, in the same form as it comes before us, and it was held that an injunction would lie. What we here said of the case just mentioned applies to *Keyser* v. *Rice*, 47 Md. 203, where the precise question was adjudicated. The Supreme Court of Kansas, in two recent cases, adopts substantially the same views as those asserted in the cases to which we have referred: *Zimmerman* v. *Franke*, 34 Kan. 650; *Missouri Pacific Rd.* v. *Maltby*, Id. 125.

The object of our exemption laws, as this court has many times declared, is to secure to a resident householder the reasonable comforts of life for himself and his family. This is a doctrine asserted by our organic law, and by our statutes. It was to give full and just effect to this humane and benign principle of our law that the

legislature enacted a statute making it an offence for any person to send a claim against a debtor out of the state for collection in order to evade our exemption laws. Rev. Stat. 1881, sect. 2162. The enactment of which we are speaking is prohibitory in its character; for it is one of the rudimentary principles of the law that a statute making an act a criminal offence prohibits its performance as effectually as if the prohibition were expressed in direct terms. There can therefore be no doubt that our statutory law prohibits a creditor from evading our exemption laws by sending his claim to a foreign jurisdiction for collection. The attempt to take from a workman the wages earned by him by sending the claim to a jurisdiction where our exemption laws will not avail him, is one that the courts will not tolerate. They will, on the other hand, lay "the strong arm of chancery" upon persons within their jurisdiction, and prevent them from taking away the wages which our constitution and our statute wisely secure to him for the support of his family.

The case, *Uppinghouse* v. *Mundel*, 103 Ind. 238, s. c. 2 N. E. Rep. 719, is addressed to questions essentially different from those presented by this record, and it is, therefore, not at all in point.

Judgment reversed.

English Cases.—The Court of Chancery of England at an early day exercised the power asserted in the principal case. The case of *Penn* v. *Baltimore*, 1 Ves. Sen. 444, is an illustration of this power, where the boundary line between Maryland and Pennsylvania was settled.

Proceeding on the theory that its decrees operated only *in personam*, that court has foreclosed a mortgage in the island of Sark, *Toller* v. *Carteret*, 2 Vern. 494, in the West Indies; *Archer* v. *Preston*, 1 Eq. Abr. 133; *Lord Kildare* v. *Eustace*, 1 Vern. 419; *Lord Arglasse* v. *Muschamp*, Id. 75, 135; and in other of England's colonial possessions: *Paget* v. *Ede*, L. R., 18 Eq. 118. (In this country, see *Mead* v. *New York, &c., Rd.*, 45 Conn. 199; and 2 Jones' Mort., sect. 1444).

In the case of *Portarlington* v. *Soulby*, 3 Myl. & K. 104, Lord BROUGHAM reviews at length the cases before the Court of Chancery on this subject. The endorsee of a bill of exchange was enjoined from proceeding in the courts of Ireland, on the ground that, if he had proceeded in the English courts, he would have been enjoined by the Court of Chancery, because contrary to good conscience.

Lord BROUGHAM said: "Soon after the restoration, and when this, like every other branch of the court's jurisdiction, was, if not in its infancy, at least far from that maturity which it attained under the illustrious series of chancellors —the Nottinghams and Macclesfields, the parents of equity—the point received a good deal of consideration in a case which came before Lord CLARENDON, and which is reported shortly in Freeman's Reports, and somewhat more fully in Chancery Cases, under the name of *Lowe* v. *Baker*, 2 Freeman 125; s. c. 1 Ch. Cas. 67. In *Lowe* v. *Baker*, it appears that only one of several parties which had begun proceedings in the court of Leghorn was resident within the jurisdiction there, and the court allowed

the subpœna to be served on him, and that this should be good service on the rest. So far, there seems to have been very little scruple in extending the jurisdiction. Lord CLARENDON refused the injunction to restrain these proceedings at Leghorn, after advising with the other judges. But the report adds: '*Sed quare*, for all the bar was of another opinion;' and it is said that, when the argument against issuing was used, that this court had no authority to bind a foreign court, the answer was given that the injunction was not directed to the foreign court, but to the party within the jurisdiction here. A very sound answer, as it appears to me; for the same argument might apply to a court within this country, which no order of this court ever affects to bind, our orders being only pointed at the parties, to restrain them from proceeding. Accordingly, this case of *Lowe* v. *Baker* has not been recognised or followed in later times.

Two instances are mentioned in Mr. Hargraves' collection, of the jurisdiction being recognised; and in the case of *Wharton* v. *May*, 5 Ves. 271. In *Beauchamp* v. *Marquis of Huntley*, Jac. 546, which underwent so much discussion, part of the decree was to restrain the defendant from entering up any judgment, or carrying on any action in what is called the Court of Great Sessions in Scotland; meaning, of course, the Court of Session. I have directed a search to be made for precedents, in case the jurisdiction had been exercised in any instances which have not been reported; and one has been found directly in point. It is the case of *Campbell* v. *Houlditch*, in 1820, where Lord ELDON ordered an injunction to restrain the defendant from further proceeding in an action which he had commenced before the Court of Sessions in Scotland. From the note which his lordship himself wrote upon the petition, requiring a further affidavit, and from his refusing the injunction to the extent prayed, it is clear that he paid particular attention to it. This precedent, therefore, is of very high authority. In truth, nothing can be more unfounded than the doubts of the jurisdiction. That is grounded, like all other jurisdictions of the court, not upon any pretension to the exercise of judicial and administrative rights abroad, but on the circumstance of the person of the party on whom this order is made, being within the power of the court. If the court can command him to bring home goods from abroad, or to assign chattel interests, or to convey real property locally situated abroad; if, for instance, as in *Penn* v. *Lord Baltimore*, 1 Ves. Sen. 444, it can decree the performance of an agreement touching the boundary of a province in North America; or, as in *Toller* v. *Carteret*, 2 Vern. 494, can foreclose a mortgage in the Isle of Sark, one of the Channel Islands, in precisely the like manner, it can restrain the party being within the limits of its jurisdiction, from doing anything abroad, whether the thing forbidden be a conveyance, or other act, *in pais*, as the institution or prosecution of an action in a foreign court."

Thus where a British creditor fraudulently obtained a judgment in the British West Indies, against his debtor, and sold the debtor's real estate on execution, and became the purchaser under the decree, the Court of Chancery set aside the sale for fraud: *Croustown* v. *Johnston*, 3 Ves. Jr. 170; s. c. 5 Id. 276.

On a bill to redeem, all the parties being within the jurisdiction of the court, a decree was entered, requiring an inquiry to be made as to the amount due, and restrained proceedings for the foreclosure of the mortgage in a foreign court: *Beckford* v. *Kemble*, 1 Sim. & Stu. 7.

A creditor had availed himself of a decree in England, to procure relief against the assets of an estate, and he was enjoined from proceeding with a suit against the same estate in an Irish court. *Beau-*

champ v. *Lord Huntley*, Jac. 546. After decree, proceedings were begun in a foreign court, but they were enjoined: *Wedderburn* v. *Wedderburn*, 4 Myl. & C. 585; s. c. 2 Beav. 208; see *Graham* v. *Maxwell*, 1 Mac. & G. 71; *Kennedy* v. *Earl of Cassillies*, 2 Swanst. 313; *Busby* v. *Munday*, 5 Madd. 297; *Harrison* v. *Gurney*, 2 J. & W. 563; *Bunbury* v. *Bunbury*, 3 Jur. 644; affirming *Carron Iron Co.* v. *Maclaren*, 5 H. L. 416; s. c. 1 Beav. 318; Cas. 416; *Jones* v. *Gedders*, 1 Ph. 724; *Elliot* v. *Lord Minto*, Mad. & Gel. 17; *Jackson* v. *Petrie*, 10 Ves. 164.

But where an encumbrance rested upon immovable property situated in a foreign country, and the creditor brought suit in that country to enforce his rights, the Court of Chancery refused to restrain him, even though the encumbrancer was a company in the course of winding up; *Moon* v. *Anglo Italian Bank*, 10 Ch. Div. 681; see *In re Boyse*, L. R., 15 Ch. Div. 591; *Hope* v. *Carnegie*, L. R., 1 Ch. App. 320; *In re Chapman*, L. R., 15 Eq. 75; *Ostell* v. *Le Page*, 2 DeG., M. & G. 892.

Irish Courts.—A suit was brought in the Irish Court of Chancery, and a suit concerning the same subject-matter was instituted afterwards in the English Court of Chancery; the plaintiff in the English suit was enjoined in Ireland from further proceeding in England without permission of the Master of Rolls, there to be obtained, upon notice to the plaintiff in the Irish Court: *Parnell* v. *Parnell*, 7 Ir. Ch. 322.

American Cases.—The courts of America have not been slow to follow the English practice, upon the same principles underlying the decisions of that country.

In Massachusetts, in a case before the Supreme Court, it was sought to restrain a creditor residing there from proceeding against a resident creditor of Msssachusetts in the courts of Pennsylvania, in garnishment, on the ground that the creditor knew, when he instituted the foreign suit, that insolvent proceedings were about to be instituted against the debtor at home. The object of the foreign suit was to obtain a preference. The injunction was granted, after an elaborate presentation of the principles underlying the case: *Dehan* v. *Foster*, 4 Allen 545; *Cunningham* v. *Butler*, 6 N. E. Rep. 782. On a second hearing, the resident defendant was allowed his costs in the foreign court up to the time the bill for the injunction was filed; but not after that date: *Dehan* v. *Foster*, 7 Allen 57. See *Lawrence* v. *Batcheller*, 131 Mass. 506.

In New York, the courts exercise this power in extreme cases, and punish a disobedience of their orders as a contempt: *Erie Ry.* v. *Ramsey*, 45 N. Y. 637. Generally, the courts will not interfere, but leave the parties to fight out the case in the foreign jurisdiction: *Williams* v. *Ayrault*, 31 Barb. 364; *Mead* v. *Merritt*, 2 Paige 402; *Burgess* v. *Smith*, 2 Barb. Ch. 276; *Bicknell* v. *Field*, 8 Paige 440.

But where the injunction defendant was proceeding abroad before an American consul, who had no jurisdiction of the case, an injunction was granted: *Dainese* v. *Allen*, 3 Abb. Pr. (N. S.) 212. So, where the defendant, in a divorce case, commenced an action in Connecticut against his wife for a separation, and a decree relieving him from the obligation of supporting her, intending to bring it to trial in that state before his wife could obtain a trial in New York; and all her witnesses resided in New Jersey, and she was pecuniarily unable to defend the action brought in Connecticut, an injunction was granted at her request to stay the husband's prosecution of his Connecticut case: *Kittle* v. *Kittle*, 8 Daly 72.

In the case of *Claflin & Co.* v. *Hamlin*, 62 How. Pr. 284, the plaintiffs were burned out in Chicago's great fire, by reason thereof they became indebted

in the sum of one million dollars, and settled with their creditors at twenty-five cents on the dollar. Afterwards one of their creditors brought an action in Illinois, though a resident of New York, as were also the debtors then, alleging that the debtors had secretly settled with some of their creditors at more than the dividend received by them. It appeared that the suit was commenced in Illinois for blackmailing purposes and to ruin the credit of Claflin & Co. A restraining order was granted. So, where it appeared that the rights of the parties could not be litigated fully abroad, the plaintiffs were restrained: *Vail* v. *Knapp*, 49 Barb. 299; see *Hayes* v. *Ward*, 4 Johns. Ch. 123.

The Georgia case, cited in the principal case, was where a creditor sued his debtor, both in that state and in New York, on the same claim; and first obtained judgment in Georgia, which was paid off. He fraudulently led the debtor to believe that the New York case would not be pressed to judgment, but it was in fact so done, the Georgia court restrained the creditor from further proceedings in New York. Both parties resided in Georgia. See also *Lightfoot* v. *Planter's Bank*, 58 Geo. 136. Likewise in the same state some attorneys brought suit for their foreign clients in the federal court, and were enjoined, but disobeyed the order; they were fined for contempt; *Hines & Hobbs* v. *Rawson*, 40 Ga. 356; s. c. 2 Am. Rep. 581.

In Vermont this power will not be exercised unless there exists some peculiar equitable ground for so doing, and the mere preference of the plaintiff to have the matter determined in his own state courts is not sufficient. If the court cannot enforce its decree, it will also deny the writ; and this is true of all courts. This would be the case when the injunction defendant resides abroad, out of the jurisdiction of the court, and has no property within the state where the application is made for a writ of sequestration to operate upon in case a decree be entered: *Bank* v. *Rutland, &c., Rd.*, 28 Vt. 470; see *Vermont, &c., Rd.* v. *Vermont Central Rd.*, 46 Id. 792.

In Illinois relief was refused, although all the parties were before the court, on the ground that, after suit was commenced abroad, it would not be controlled by the Illinois courts: *Harris* v. *Pullman*, 84 Ill. 20; s. c. 25 Am. Rep. 416. But in a case where the plaintiff and defendant were partners, and the defendant obtained a dissolution of the partnership in the Wisconsin courts, in which it was stipulated that the plaintiff might carry on the partnership business under the direction of a receiver, with the right to all the products manufactured in the business, the court restrained the defendants from illegally interfering by replevin suits with the sale of such manufactured products: *Pindell* v. *Quinn*, 7 Ill. App. 605; see *Great Falls, &c.*, v. *Worster*, 23 N. H. 470.

In New Hampshire this power is exercised; but not where the foreign judgment is merely erroneous, and relief can be obtained by an appeal: *Metcalf* v. *Gilmore*, 59 N. H. 417; s. c. 47 Am. Rep. 217. And in Michigan this relief is denied generally, on the ground that it would be an undue interference with the administration of justice in foreign courts: *Carroll* v. *Farmers' & Mechanics' Bank*, Harr. 197, citing *Mead* v. *Merritt*, 2 Paige Ch. 402.

In a proper case, a party will be restrained by a state court from proceeding in a federal court: *Hines & Hobbs* v. *Rawson*, *supra*; and the federal courts will also restrain a party from proceeding in a state court, on a proper case made: see, however, *Rogers* v. *Cincinnati*, 5 McL. 337; *Town of Venice* v. *Woodruff*, 62 N. Y. 462.

Like the principal case, proceedings abroad to attach earnings of a laborer that are exempt at home from execution, is a common device of the creditor. The case of *Dehon* v. *Foster*, 4 Allen 545, was

an attachment of property abroad; and an injunction was granted. Substantially the same thing was done in England: *Mackintosh* v. *Ogilvie*, 4 T. R. 103, note; s. c. 3 Swanst. 365, note. In Ohio, before the garnishee or attachment proceedings are determined abroad, the courts will restrain the creditor from further proceedings: *Snook* v. *Snetzer*, 25 Ohio St. 516; but not after their determination; *Baltimore, &c., Rd.* v. *May*, 25 Id. 347. See *Morgan* v. *Neville*, 74 Penn. St. 53. A like rule prevails in Maryland. so far as restraining theproceedings before judgment, but nothing is said of it after their determination: *Keyser* v. *Rice*, 47 Md. 203; s. c. 28 Am. Rep. 448; likewise in Iowa: *Hager* v. *Adams*, 30 N. W. Rep. 36; *Teager* v. *Lendsley*, 27 Id. 739; and in Kansas: *Zimmerman* v. *Franke*, 34 Kan. 650; see *Missouri Pacific Rd.* v. *Maltby*, 34 Id. 125.

The case of *Uppinghouse* v. *Mundel*, cited in the principal case, was where an Indiana creditor of an Indiana debtor transferred his claim, in violation of the statute, to a citizen of Kentucky, who garnished the debtor's wages. The action was brought against the creditor by the debtor for damages, because of the illegal transfer, and consequent deprivation of the debtor of his right of exemption. It was held that such an action would not lie.

W. W. THORNTON.

Crawfordsville, Ind.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF ILLINOIS.[1]

COURT OF ERRORS AND APPEALS OF MARYLAND.[2]

COURT OF APPEALS OF NEW YORK.[3]

SUPREME COURT OF NORTH CAROLINA.[4]

SUPREME COURT OF PENNSYLVANIA.[5]

SUPREME COURT OF THE UNITED STATES.[6]

ADMIRALTY.

Jurisdiction.—A District Court of the United States in Admiralty, has no jurisdiction of a petition by the owner of a steam vessel, for the trial of the question of his liability for damage caused to buildings on land, by fire alleged to have been negligently communicated to them by the vessel, through sparks proceeding from her smoke stack, and for the limitation of such liability, if existing, under sections 4283 and 4284, Rev. Stat.: *Ex parte Phœnix Ins. Co.*, 118 U. S.

ASSIGNMENT. See *Subscriptions.*

[1] From Hon. N. L. Freeman, Reporter; to appear in 117 Ill. Rep.

[2] From J. Shaaf Stockett, Esq., Reporter; to appear in 65 Md. Reports.

[3] These cases will probably appear in 103 or 104 N. Y. Rep

[4] From Theodore F. Davidson, Reporter; to appear in 95 or 96 N. C. Rep.

[5] These cases will probably appear in 113 or 114 Penn. St. Rep.

[6] From J. C. Bancroft Davis, Esq., Reporter; to appear in 118 U. S. Rep.